

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on January 18, 2001 at 8:00 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. Darrel Adams (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Bill Eggers (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Jeff Mangan (D)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. Ken Peterson (R)  
Rep. Diane Rice (R)  
Rep. Bill Thomas (R)  
Rep. Merlin Wolery (R)  
Rep. Cindy Younkin (R)

**Members Excused:** Rep. Steven Gallus (D)

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Mary Lou Schmitz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: **HB 195 - 1-11-01**  
**HB 224 - 1-16-01**  
**HB 146 - 1-11-01**

Executive Action: **HB 195 - DPAA**

**HEARING ON HB 195**

**Sponsor:** Rep. Merlin Wolery, HD 90, Hill County said this is a Bill requested by Hill County Attorney, David Rice. It would add criminal possession of dangerous drugs and criminal possession with intent to distribute to the list of crimes that, if committed by a youth 16 years of age or older, are transferable from Youth Court to District Court. **EXHIBIT(juh14a01)**

**Proponents:** Rep. Brad Newman, HD 38, said he appears at the request of Hill County Attorney, David Rice and because he thinks it is a good Bill. It does not change existing law except for adding two offenses to the statute. This is existing Montana law as far as we deal with older, more experienced juvenile offenders and how we deal with offenses in the adult district court. This Bill simply adds criminal possession of dangerous drugs, second subsequent offense, not the first offense, and criminal possession with intent to distribute, to the list of enumerated offenses. The question posed to this Committee is quite simple and quite straightforward. Are these two situations, or offenses, of such a severe nature that we should add them to the list of enumerated offenses in current existing law? He believes, as a prosecuting attorney, that they should.

**Bob Peake, Chief Juvenile Probation Officer, Hill County.**

**Pam Bucy, Assistant Attorney General and on behalf of John Connor, who represents the County Attorneys' Association.**

**Sandy Oitzinger, Executive Director, Montana Juvenile Probation Officers' Association.**

**Joy Mariska, Director, Court Services; Chief Juvenile Probation Officer, Yellowstone County.**

**Opponents:** None

**Questions from Committee Members and Responses:** Reps. Peterson, Harris, Clark, Noennig, Hurdle, Clancy, Mangan to Rep. Newman, Pam Bucy, Bob Peake, Ms. Oitzinger and Ms. Mariska for clarification.

**{Tape : 1; Side : A; Approx. Time Counter : 0 - 29.2}**

**Closing by Sponsor:** Rep. Wolery closed the Hearing on HB 195.

***{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 9.4}***

**HEARING ON HB 224**

**Sponsor:** Rep. Joan Hurdle, HD 13, Billings said this Bill would give some assistance to children whose mothers are in prison. The League of Women Voters, in a statewide study, proposed to study the effects of incarceration on the children of those who are incarcerated and they have not completed that study so she is not speaking for the League of Women Voters, however, the Billings branch completed their portion of the study and she served on that committee. **EXHIBIT(juh14a02) EXHIBIT(juh14a03)** The Bill has safeguards. The requirements of this Bill apply only to formerly custodial care-giving parents.

**Proponents:** Deborah Kottel, Dean of the College of Professional Studies, University of Great Falls.

Sharon Hoff-Brodowy, Montana Catholic Conference

Betty Whiting, Montana Association of Churches

***{Tape : 1; Side : B; Approx. Time Counter : 9.4 - 29.1}***

***{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 5.7}***

Rebecca Moog, Montana Women's Lobby

Rep. Gail Gutsche, HD 66, Missoula

***{Tape : 2; Side : A; Approx. Time Counter : 5.7 - 8.4}***

**Opponents:** None

**Questions from Committee Members and Responses:** Reps. Clark, Clancy, Laszloffy, Peterson, Curtiss, Mangan, Harris, Rice, Shockley, Gutsche to Ms. Kottel; Rep. Hurdle; Mike Ferriter, Administrator, Community Corrections Division, Department of Corrections for clarifications.

***{Tape : 2; Side : A; Approx. Time Counter : 8.4 - 29}***

**Closing by Sponsor:** Rep. Hurdle said it is obvious she is going to have to change the words "overnight stays" to just "extended visiting" and leave that up to the Department of Corrections. This Bill is a beginning of all the things that need to be done. There are 5,000 children in Montana who didn't choose these

parents. For the last 50 years, every study that has been done on this subject in this country, points to the fact that rehabilitation depends on family relationships and other relationships. Studies have consistently shown the prisoners who maintain family ties do significantly better on relief than those who do not. Recommendations are designed to enhance this effect by helping families of offenders from the time of arrest, through incarceration until offenders are successfully re-integrated in the community. **Rep. Hurdle closed the Hearing on HB 224.**

**{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 15.5}**

**Discussion:** **Rep. Mangan** brought up the subject of fiscal notes, saying the committee should be a little more patient and wait for the fiscal notes that have been requested so the Bills can be fully discussed with all the appropriate information prior to taking action on it. **Rep. Eggers** also spoke on fiscal notes. He said they have a right to review the Bills in their entirety and they are not getting that opportunity, especially in regard to **Rep. Juneau's** Bill. The delay is slowing them down and a delay will lead to a bottleneck and a bottleneck will lead to a gridlock because then he will not be interested in voting on any Bills.

**Rep. Shockley** said he will speak to the **Budget Director** and the **Speaker** about this. This has been a problem in other Committees as well as this one and he does not think it impacted adversely on HB 54. His concerns in this situation are: if we get a fiscal note now, and it is obvious from the testimony from the Department that it will include a large amount of money for something that the Committee may not want, based upon what the Sponsor said, that means, when it goes out, it will have a fiscal note that is not really relevant and is going to hurt the Bill.

**Rep. Laszloffy** said in retrospect just to this Bill, he has the same feeling. The amendments that will affect this Bill will decrease substantially the fiscal note and increase the chance of the Bill's passing. The Bill should go out in the amended form, otherwise as **Rep. Hurdle** said, we will get it back with a huge fiscal note and chances of passing the Bill at that point will diminish.

**Rep. Clark** said he gets a sense that there is support in the Committee for this Bill and he thinks the support hinges upon this amendment. He asked **Rep. Hurdle** what her sentiments are about allowing the Bill to proceed? If we ask for a fiscal note and wait for it, it will be a large note, and he feels they will not get the note in a timely fashion. **Rep. Hurdle** said she has already agreed, on the record, to change "overnight stays" to

"extended visiting" so she doesn't have any problem with that amendment. Her problem is, that, as soon as someone opens on this Bill, then it is subject to anything. Unless she could have some assurance that they could make that simple amendment, she would like the Committee to request the fiscal note and postpone further action.

**Rep. Mangan** said he understands the discussion on **Rep. Hurdle's** Bill, however, it is not just on that Bill. There are House rules that require if there is a fiscal impact, a fiscal note needs to be attached to the Bill before it is presented and he thinks it is against the rules to proceed in that fashion.

**Rep. Laszloffy** said, in an effort to proceed in a bi-partisan fashion on this Bill, the two Vice-Chairs of the Majority and Minority parties on this committee have talked and concur that the purpose of this amendment is to move the Bill forward. They would like to propose to open on the Bill, deal with the amendments strictly pertaining to the "overnight stays", pass that amendment, if it passes, and postpone action on the Bill, pending the fiscal note.

**Mr. MacMaster** said the Committee can try that to see if they will get a fiscal note. He is not sure, under the rules, they will get a fiscal note because a standing committee does not amend a Bill. All the committee does is recommend to the full House the amendments the Committee wants put on the Bill. If this Committee votes to put amendments on a Bill, those amendments don't really go on the Bill. When the Committee Bill is passed out of Committee, DO PASS AS AMENDED, it is only a recommendation that those amendments go on the Bill. That being the case those amendments will not really be on the Bill at the time you ask for the fiscal note and the rules say "fiscal notes must be requested by the presiding officer of either House at the time of introduction or after the adoption of substantive amendments to an introduced Bill shall determine the need for the note". So it may be, under the rules, that if you ask for the fiscal note you will get it on the Bill as originally introduced, not with the amendments you want. To get it with the amendments you want, you would have to have a DO PASS motion that is adopted by the full House, then the amendments would be on the Bill and then Speaker McGee could ask that the fiscal note be written to take into effect those amendments.

**{Tape : 2; Side : B; Approx. Time Counter : 15.5 - 28.5}**

**{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 8.9}**

**Rep. Eggers** said in lieu of **Mr. MacMaster's** remarks, this Bill is not ready for the Committee's consideration. **Rep. Shockley** agreed.

**HEARING ON HB 146**

**Sponsor:** **Rep. Jim Shockley, HD 61, Ravalli County** said this Bill has been requested by the Department of Corrections. It deals with juvenile delinquency and money and how we handle it. It is a very expensive process and this Bill does have a fiscal note that will be close to \$1 million a year. The Bill creates a budget for each Judicial District. The Youth Court in each Judicial District will have a budget with x amount of money. This money can be used to handle the juvenile delinquency problems. The control of the program will be with the Youth Court in that District. The constraint is they will have to stay within the budget with certain exceptions. There will be an \$800,000 reserve for districts that run over their budgets but this reserve will be held by the Department and the Youth Court will have to go to the Department and explain why they went over.

**Proponents:** **Mike Ferriter, Administrator, Community Corrections Division** **EXHIBIT(juh14a04)**

**Matt Robertson, Attorney, Department of Corrections**

**Deb Kottel, Dean, University of Great Falls**

**Sen. Mike Halligan, SD 34, Missoula**

*{Tape : 3; Side : A; Approx. Time Counter : 8.10 - 23.9}*

**Carol A. Stratemeyer, Chief Juvenile Probation Officer, 21<sup>st</sup> Judicial District Youth Court** **EXHIBIT(juh14a05)**

**Dick Boutelier, Youth Court Officer, 8<sup>th</sup> Judicial District, Great Falls.**

**Richard Meeker, Chief Probation Officer, 1<sup>st</sup> Judicial District, Lewis and Clark and Broadwater Counties.**

**Opponents:** **Sandy Oitzinger, Executive Director, Montana Juvenile Probation Officers' Association.** **EXHIBIT(juh14a06)**

*{Tape : 3; Side : A; Approx. Time Counter : 23.1 - 29.7}*

*{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 8.7}*

**Glen Welch, Chief Probation Officer, Missoula**

**Peggy Beltram, Cascade County Commissioner**

**Joy Mariska, Director, Court Services, 13<sup>th</sup> Judicial District, Yellowstone County.**

**Mark Angelus, Deputy County Attorney, Yellowstone County.**

**Tom Ramirez, Billings, 13<sup>th</sup> Judicial District, Billings**

**Rep. Jeff Mangan, HD 45, Great Falls**

**Robert Peake, President, Juvenile Probation Officers' Association**

*{Tape : 3; Side : B; Approx. Time Counter : 8.7 - 29.7}*

**Questions from Committee: Reps. Curtiss, Newman, Hurdle, Noennig, Clark, Peterson, Mangan to Matt Robertson and Mike Ferriter, Department of Corrections; Deb Kottel; Joy Mariska for clarification.**

*{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 29}*

**Further Questions from Committee: Reps. Mangan, Gutsche to Mike Ferriter; Ms. Kottel; Ms. Mariska for clarification.**

**Closing by Sponsor: Rep. Shockley closed the Hearing on HB 146** by saying the amount of money involved, roughly \$19 million, is just a little less than what they spent the last biennium. Juvenile probation officers work for the District Judge and not for the Department. They are also paid by the County Commissioners, not the Department. There was a County Commissioner concerned about the costs. That was discussed specifically on page 17: the Judge cannot order local government to make any payments, with a treatment care exception. The idea is to put on some monetary restraints. There is going to be some conflict with the judges because this statute says specifically that they may not make the Department pay. **Rep. Shockley** discussed the merits of amendments he will propose.

**Rep. Mangan** referred to his testimony and said for the Chair, **Rep. Laszloffy** to make a blanket opinion that he is opposed to this Bill is not only wrong but is improper and he respectfully requests the Chair reverse that and put it in the record. **Rep. Laszloffy** said with respect to **Rep. Mangan**, the reason he ruled that way (as an Opponent) was because, when he (**Rep. Mangan**) was talking about page 14, lines 23, 24 and 25, he said he was

opposed to that statement. That is not a neutral statement. That is taking a position on the Bill and whether or not **Rep. Mangan** said he asked for a Do Pass or a Do Not Pass is irrelevant and that's the reason he made that ruling. He does not mean to be contentious but the reason he did that, and, as stated above, suggested **Rep. Mangan** talk to his Vice-Chair. If that does not work out he can always come back. According to House Rule 2030, sub 2, any decision of the Chairman is reversible and he can appeal to the Committee. **Rep. Clark** recommended that they reserve this for a time when they have executive action and he will discuss this with **Rep. Mangan** and **Rep. Laszloffy** to settle the issue. **Rep. Noennig** concurred with that. He thinks **Rep. Mangan's** position can be made a motion in executive action and the Committee can rule on it. The way he understands, it can be a ruling of the Chair of the Committee. He respectfully requested they defer that until a time when the Committee meets in executive action and bring up the issue then if it still needs to be done and hasn't been resolved. **Rep. Mangan** agreed.

**EXHIBIT** (juh14a07) and **EXHIBIT** (juh14a08) received as additional information for HB 151.

**EXECUTIVE ACTION ON HB 195**

**Motion:** **REP. NEWMAN** moved that **HB 195 DO PASS. #1**

**Motion:** **REP. NEWMAN** moved that **HB 195 BE AMENDED. #2**

**Discussion:** **Rep. Newman** explained his amendments saying specifically on Page 2, lines 5 and 6 in the new language concerning criminal possession of dangerous drugs, the amendment would delete subsection II and would delete "Second or subsequent offense".

**EXECUTIVE ACTION ON HB 195**

**Motion:** **REP. NOENNIG** moved that **HB 195 DO PASS AS AMENDED. #3**

**Discussion:** **Reps. Hurdle, Peterson, Noennig, Newman, Adams, Gutsche, Clark, Clancy, Eggers and Younkin.**

**Vote:** **Motion #3** carried 15 - 4 with **Reps. Clark, Gutsche, Hurdle, and Mangan** voted no.

*{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 28.9}*

*{Tape : 5; Side : A; Approx. Time Counter : 0.1 - 14.5}*



**ADJOURNMENT**

Adjournment: 12:10 A.M.

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REP. JIM SHOCKLEY, Chairman

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MARY LOU SCHMITZ, Secretary

JS/MS

**EXHIBIT** (juh14aad)